

January 29, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Collins Oil Service

Date of Filing: January 13, 2009

Case No.: TEE-0057

Collins Oil Service filed an Application for Exception with the Department of Energy's (DOE) Office of Hearings and Appeals (OHA). The firm requests permanent relief from its requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Collins Oil Service's Application should be granted.

I. Background

In the 1970's, Congress's lack of information about petroleum products impeded our nation's response to the oil crises.¹ Congress therefore directed the EIA to collect data on the supply, demand, and pricing of petroleum products.² The EIA administers Form EIA-782B, which is a monthly report whereby resellers and retailers report their sales volume and price of motor gasoline, No. 2 distillates, propane, and residual fuel oil.³ In order to minimize firms' reporting burden, the EIA periodically selects a relatively small sample of companies⁴ to file the form and permits firms to rely on reasonable estimates.⁵

The EIA summarizes the collected data in publications such as *Petroleum Marketing Monthly*. Congress and most state governments use the information to project trends and formulate energy

¹ See H.R. REP. NO. 96-373, at 15, 17 (1979).

² 15 U.S.C. § 772(a).

³ 42 U.S.C. §§ 7135(a)-(m).

⁴ The EIA requires "certainty firms"—firms that account for over five percent of the sales of any particular product in a state or do business in four or more states—to always file Form EIA-782B. The EIA also selects a random sampling of all other, or "non-certainty" firms, to file Form EIA-782B. The sample of "non-certainty" firms changes approximately every twenty-four to thirty months. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

⁵ Form EIA-782B requires firms to make a good-faith effort to provide reasonably accurate information that is consistent with their accounting methods. A firm must alert the EIA if it finds that its estimates are materially different from actual data.

policies. Collecting this data is vital to our nation's ability to anticipate and respond to energy shortages.

II. Exception Criteria

Congress requires OHA to grant exception relief from filing Form EIA-782B to prevent "special hardship, inequity, or unfair distribution of burdens. . . ."⁶ Since the Form EIA-782B reporting requirements burden all reporting firms, exception relief is appropriate only where a firm can demonstrate that a reporting requirement adversely affects it in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Thus, mere inconvenience⁷ or the length of time a firm has reported⁸ does not constitute a hardship warranting relief. Similarly, the fact that a firm is relatively small does not constitute a hardship warranting relief. If firms of all sizes, both large and small, are not included in the survey, the reporting sample's estimates and projections will be unreliable.⁹

OHA has granted exception relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm's financial situation was so precarious that the additional burden of meeting the reporting requirements threatened the firm's continued viability;¹⁰ the firm experienced personnel deaths, illnesses or absences;¹¹ and where extreme or unusual circumstances disrupted the firm's activities.¹²

⁶ 42 U.S.C. § 7194(a); *see also* 10 C.F.R. § 1003.25(b)(2) (allowing OHA to grant exception "to alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens").

⁷ *Glenn E. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (Oct. 8, 1987) (Case No. KEE-0143). OHA decisions regarding Form EIA-782B issued after February 2, 1995, may be accessed at <http://www.oha.doe.gov/reportc.asp>.

⁸ *Rice Oil Co., Inc.*, 26 DOE ¶ 81,010 (Mar. 21, 1997) (Case No. VEE-0035) (citations omitted).

⁹ *Mulgrew Oil Co., Inc.*, 20 DOE ¶ 81,009 (May 9, 1990) (Case No. LEE-0012) (citations omitted).

¹⁰ *Mico Oil Co., Inc.*, 23 DOE ¶ 81,015 (Mar. 4, 1994) (Case No. LEE-0075) (granting exception relief where a firm lost one million dollars over the previous three years and prepared to liquidate its assets and file for bankruptcy); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (Oct. 15, 1987) (Case No. KEE-0152) (granting exception relief where a firm entered Chapter 11 reorganization and made court-mandated layoffs).

¹¹ *Midstream Fuel Serv., Inc.*, 24 DOE ¶ 81,023 (May 31, 1994) (Case No. LEE-0083) (granting three months' exception relief where a small firm experienced personnel shortages due to two employees on maternity leave, an uptick in paperwork due to the tax season, and an inability to hire additional personnel); *Ward Oil Co.*, 24 DOE ¶ 81,002 (Mar. 29, 1994) (Case No. LEE-0088) (granting ten months' exception relief where a firm's owner and office manager suffered a long illness and death, resulting in personnel shortages and administrative challenges that caused the firm to fall sixty days behind in its paperwork); *S&S Oil & Propane Co., Inc.*, 21 DOE ¶ 81,006 (Sept. 23, 1991) (Case No. LEE-0023) (granting exception relief where a firm's owner worked nights and weekends amid a life-threatening illness); *E. Petroleum Corp.*, 14 DOE ¶ 81,011 (Apr. 25, 1986) (Case No. KEE-0016) (granting two months' exception relief where a computer operator's injury rendered the firm unable to complete the form).

¹² *Little River Vill. Campground, Inc.*, 24 DOE ¶ 81,033 (July 19, 1994) (Case No. LEE-0127) (granting several months exception relief where a firm's office was flooded); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (Nov.

III. Collins Oil Service's Application for Exception

Collins Oil Service is a non-certainty firm located in Arthur, Illinois. The firm sells No. 1 and No. 2 diesel, kerosene, and two types of gasoline. Collins Oil Service stated that it requests permanent relief from its obligation to file Form EIA-782B because its 72-year-old owner-manager William Collins recently suffered a stroke.¹³

We contacted Collins Oil Service to gather more information. Collins Oil Service employs three mechanics, one secretary, and one part-time worker. Mr. Collins stated that he used to fill out Form EIA-782B on behalf of his firm. Since his stroke, he has had difficulty writing, talking, and concentrating.¹⁴ Because he now has difficulty completing 50-75% of his office duties,¹⁵ completing the form has become "a handicap." Additionally, he fears that his responses are no longer accurate. Collins Oil Service does not have another employee who can fill out the form, nor can it afford to hire an employee just to do so.¹⁶ September 2008 was the last month that Collins Oil Service completed the form.¹⁷

IV. Analysis

Under the exception criteria stated above, the fact that Mr. Collins suffered a stroke that causes him difficulty completing the majority of his office duties, combined with Collins Oil Service's inability to hire extra help, establishes that Collins Oil Service is experiencing a hardship significantly greater than the burden that other reporting firms experience. Therefore, Collins Oil Service has demonstrated that it meets the standards for exception relief.

We will grant exception relief for a period of fifteen months from October 2008, the first month after Mr. Collins's stroke that Collins Oil Service could not file Form EIA-782B. This period will allow Collins Oil Service time to address the difficulties it is experiencing as a result of Mr. Collins's stroke. Collins Oil Service may request an extension of exception relief at the end of this period, to the extent the circumstances warranting the approval of relief continue to exist.

28, 1979) (Case No. BEE-0293) (granting exception relief where a hurricane heavily damaged a firm's office and the firm concentrated its efforts on restoring service to its customers).

¹³ Memorandum of Telephone Conversation between William Collins, Owner-Manager, Collins Oil Serv., and David M. Petrush, Attorney-Examiner, OHA, Jan. 21, 2009.

¹⁴ *Id.*

¹⁵ Memorandum of Telephone Conversation between William Collins, Owner-Manager, Collins Oil Serv., and David M. Petrush, Attorney-Examiner, OHA, Jan. 23, 2009.

¹⁶ Memorandum of Telephone Conversation between William Collins, Owner-Manager, Collins Oil Serv., and David M. Petrush, Attorney-Examiner, OHA, Jan. 21, 2009.

¹⁷ E-mail from Tammy G. Heppner, Survey Statistician, EIA, to David M. Petrush, Attorney-Examiner, OHA, Jan. 23, 2009.

It Is Therefore Ordered That:

- (1) Collins Oil Service's Application for Exception, Case No. TEE-0057, is hereby granted as set forth in paragraph (2) below and denied in all other respects.
- (2) Collins Oil Service is relieved of the requirement to file form EIA-782B for the months October 2008 through December 2009.
- (3) To the extent that the Application is denied, administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: January 29, 2009